United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

IN THE

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA, WASHINGTON

519

RAYMOND X. THOMAS (Pro Se)
Petitioner - Appellant

- V -

UNITED STATES OF AMERICA
Respondent - Appellee

Docket Number: 1381-68
22049

Appellant's Brief

3
ORIGINAL

STATEMENT OF CASE

Petitioner-Appellant Raymond X. Thomas, Registration Number 73777, in custody at present in the United States Penitentiary in Atlanta, Georgia, where Olin G. Blackwell is Warden thereof, appeals from a judgment of the U. S. District Court for the District of Columbia, denying him relief from an adverse decision filed pursuant to Title 28, U.S.C., Section 2255.

Appellant was convicted, partially by trial and partially from his plea of guilty, for aggregate crimes of robbery and sentenced on May 22nd 1953 to serve a total term of twenty-seven (27) years imprisonment.

STATEMENT OF FACTS

Appellant contends that the ensuing questions were not answered by the lower Court; therefore, the material issues could not be resolved without a full and fair hearing.

POINT ONE

Question: Whether a premise made by an Officer of the Court constitutes to Appellant a denial of "due process of law"?

1. Appellant in his motion to vacate judgment and sentence contended that he was "premised" by his defense counsel, (if) Appellant would enter a plea of guilty to the remaining charges, Appellant would receive "no more than a maximum of ten (10) years to run concurrently with the sentence to be imposed upon him after a conviction by the jury", for he (the defense attorney) had the assurance of the United States Attorney that he would recommend it.

Appellant contends that the "premise" of lenient treatment by an Officer of the Court did in truth induce him into entering a guilty plea to crimes of which he was not in fact guilty; therefore, a hearing should have been held to determine whether the result of Appellant's attorney, the communication to Appellant of the act, sub rosa, between defense attorney and the United States Attorney was to render the plea of guilty void because it was induced by Appellant's belief that he had been "premised" a concession by the United States Attorney of lenient treatment.

SEE: Scott v. United States, 6th Circuit, 349 F. 2d 641.

That a determination of appellant's guilty plea was voluntary and intelligent must by definition depend upon the trial court's view of appellant's subjective state of mind at the time of the plea. SEE: United States ex rel Thurmond v. Mancusi, 275 F. Supp. 508 (S.D. N.Y. 1967).

That the lower court in denying Appellant's motion to vacate judgment and sentence, pointed to no authority or records or files determining the nature of Appellant's plea as voluntary or intelligently given.

Appellant contends that a determination of the nature of the plea, all the surrounding circumstances must be considered: U. S. v. MILLER 243 F. Supp. 61 (E.D. Pa. 1965), aff'd 356 F. 2d 515 (3rd Cir. 1965), cert. denied 384 U.S. 981, 86 S. Ct. 1882, 16 L. Ed. 2d 691, and the effects of statements made to him by his own lawyer and to his lawyer by the United

States Attorney are relevant. SEE: U. S. V. LIAS, 173 F. 2d 685 (4TH Cir. 1949); 8 Moore's Fed. Prac., Chap. 1105 (4); SHELTON V. UNITED STATES, 246 F. 2d 571 (5TH Cir. 1957), rev'd other grounds, 356 U.S. 26, 78 S. Ct. 2 L. Ed. 2d 579; NOTE: 64 Yale L. J. 590, 594-595; U.S. V. SCHNEER, 194 F. 2d 598 (3RD Cir. 1952); U.S. ex rel ELKSNIS V. GILLIGAN, 356 F. Supp. 244, 249 (S.D.N.Y. 1966).

That, whether a premise was actually made by the United States Attorney is totally irrelevant inasmuch as the question herein is:

Whether the Appellant had been informed by his attorney that a premise had been made and, therefore, this information was the basis upon which Appellant entered a plea of guilty.

That Appellant was misled into entering a plea of guilty as a result of his (defense) attorney's conversations with him, lulling him into the belief that he would receive a "concurrent sentence of ten (10) years".

That the applicable principle handed down in the case of U.S. V. LIAS, 173 F. 2d 685, by the late Judge Parker should be applied where a defendant who relies on representations by his attorney that the judge or prosecuting attorney has made promises of probation, minimum sentences, or concurrent sentences. Whatever the case, a defendant is equally mistaken as to the consequences of his plea and, in either case, the mistake is induced by a reasonable reliance on statement of fact made by an Officer of the Court.

That Appellant therefore believes the lower Court indeed erred in not holding a hearing based upon the facts outlined above.

POINT TWO

Question: Whether the failure of the trial Court to follow the dictates of the Federal Rules of Criminal Procedure in Title 18, U.S.C, Rule 11, foreclosed Appellant from a full understanding and nature of the plea and the possible sentences allowed, when a premise had been made by an Officer of the Court?

Appellant contends that the failure of the trial Court to follow the prescribed teachings of Rule 11 violates the "due process of law" clauses embodied in the Constitution.

That the dictates of Rule 11 demands the trial Court to ascertain whether the defendant knew the circumstances of that to which he was pleading and the punishment for which he would be liable before accepting and entering the plea, plus, it was the duty of the trial Court to ascertain whether the plea was understandingly and intelligently entered, free of coercive matter and free of a premise.

Appellant therefore moves this Honorable Court to reverse the lower Court on this vital issue.

POINT THREE

Question: Whether the lower Court denied Appellant "due process of law" in denying Appellant's motion to vacate judgment and sentence without first going into the merits, files, and review of the motion itself?

Appellant contends that the lower Court in failing to follow the prescribed teachings of the Supreme Court, in the case of SANDERS V. UNITED STATES, 373 U.S. (1963), violated Appellant's rights to "due process" and "equal protection of law".

That, inasmuch as Appellant in his motion to vacate judgment and sentence instituted a new argument, Appellant believes he should have been granted a full hearing for the "ends of justice to have been served". SANDERS, supra, 373 at 17, 83 S. Ct. at 1078.

That the Supreme Court, in Sanders, supra, outlined the procedures for issues previously raised and rejected: (entitled), "Successive Motions on Grounds Previously Heard and Determined") (373 U.S. at 15, 83 S. Ct. 1078).

"Even if the same ground was rejected on the merits on a prior application it is open to the applicant to show that the ends of justice would be served by permitting the redetermination of the ground." 373 at 16, 83 S. Ct. at 1078.

"If purely legal questions are involved, the applicant may be entitled to a new hearing upon showing an intervening change in the law or some other justification for having failed to raise a crucial point or argument on the prior application." 373 U.S. at 17, 83 S. Ct. at 1078.

Appellant contends that his new argument consists of the question contained herein as "Question One": "Whether a premise made by an Officer of the Court denied Appellant "due process of law" and should ahve been adjudicated upon its merits, and, by failing to do so the lower Court denied Appellant relief and should accordingly be reversed and a hearing held before an impartial trier of facts. SEE: HAVERHILL GAZETTE COMPANY V. UNION LEADER CORPORATION, (1ST Cir. 1964), 333 F. 2d 798, 808, cert. denied 379 U.S. 931, 85 S. Ct. 329, 13 L. Ed. 2d 343, and cases cited therein. SEE also, HALLIDAY V. UNITED STATES, 380 F. 2d 270 at pp. 272-273 (1967).

Wherefore, it is respectfully prayed that holdings of the lower Court be reversed, and, the motion to vacate judgment and sentence be reinstated before an impartial judge for a hearing on the merits, and for all such other, further and different relief as to this Court deem meet and proper.

Respectfully submitted,

Raymond X. Thomas

Raymond X. Thomas, Pro se
Appellant - Petitioner
PMB Number: 73777
Atlanta, Georgia 30315

SWORN to before me on this
18 day of July 1968.

NOTARY PUBLIC
Person Authorized by the Act of July [illegible] to Administer Oaths (18 U.S.C. [illegible])

AFFIDAVIT

and

MOTION TO PROCEED

IN FORMA PAUPERIS

STATE OF GEORGIA)
) ss
COUNTY OF FULTON)

Comes now the Affiant-Ptitioner herein, in propria persona, and respectfully moves this Honorable Court to enter and docket this and the attached motions and petitions in forma pauperis.

Petitioner swears under oath that he is without funds, properties, stocks, bonds, or any other tangible assets of monetary value, and he is whely unable to pay the costs and/or fees in connection with this action; that his state of indigency renders him within the meaning and limits as 28 U.S.C. Section 1915, and he therefore prays for leave to proceed be granted pursuant thereto.

Petitioner verily believes that he is entitled to the redress he seeks and that this and the attached motions and petitions are neither friveleus nor malicious, but are meritable and justifiably taken under existing circumstances; Petitioner therefore prays that this Honorable Court will give the matters grave consideration.

Respectfully submitted,

Raymond X. Thomas

Raymond X. Thomas, Pro se
Affiant - Petitioner
PMB Number: 73777
Atlanta, Georgia 30315

SUBSCRIBED AND SWORN TO before me on this 18 day of July, 1968.

NOTARY - 18 U.S.C. Section 4004

Parole Officer: Authorized by the Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

A F F I D A V I T

of

POVERTY - FACT

and

CERTIFICATE OF SERVICE

STATE OF GEORGIA)
) ss
COUNTY OF FULTON)

Comes now the Affiant, and being first duly sworn under oath and according to law, depeses and says:

That I am an adult citizen of the United States, and, in view of my poverty, I am unable to pay the costs and/or fees to file and to process the documents herete attached, or to retain counsel to represent me in said cause, and that I believe, moreover, I am entitled to the redress I seek.

That the matters and things stated by me in said documents as facts and so subscribed by me herein are true, and these matters and things stated therein as upon information and belief, and so subscribed by me herein I verily believe to be true.

That I have ~~snt~~ SENT a true and exact copy of said documents to the Respondent, and as indicated, such and same being personally surrendered by me to the United States Government employee/agent whose name and seal serves as notarization for the purpose of mailing on the last date indicated below:

Raymond X. Thomas
Raymond X. Thomas, Pro se
Affiant - Petitioner
PMB Number: 73777
Atlanta, Georgia 30315

SUBSCRIBED AND SWORN TO before me on this 18 day of July, 1968.

NOTARY PUBLIC - 18 U.S.C. Sect. 4004

Parole Officers Authorized by the Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

BRIEF AND APPENDIX FOR APPELLEE

No. 22,049

RAYMOND X. THOMAS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
JOEL M. FINKELSTEIN,
Assistant United States Attorneys.

C.A. 1381-68

ISSUE PRESENTED

Whether the District Court properly exercised its discretion in denying appellant's motion, filed pursuant to 28 U.S.C. § 2255, without a hearing on the ground that it had entertained a prior motion for similar relief, held a hearing and rejected appellant's prior claim.

This case was previously before this Court and was decided in a published opinion. Thomas v. United States, 106 U.S. App.D.C. 234, 271 F.2d 500 (No. 14,941, decided October 15, 1959).

I N D E X

TABLE OF CASES

OTHER REFERENCES

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,049

RAYMOND X. THOMAS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF AND APPENDIX FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Introduction

This is an appeal from an order entered by Judge Youngdahl denying appellant's motion to vacate and set aside his convictions and sentences in three robbery cases, Cr. Nos. 227-53, 228-53, 229-53. The convictions in these cases were based on pleas of guilty. Although appellant asserts several grounds in support of his motion, it appears that he is generally alleging that his pleas of guilty were not voluntarily made. Judge Youngdahl denied appellant's motion on the ground that he had formerly denied appellant relief after having considered and heard testimony on the very same allegations. He referred to his order and memorandum entered December 16, 1959.

Procedural History

In Cr. No. 226-53, appellant was charged with robbery and tried before Judge Youngdahl and a jury. On April 15, 1953, he was found guilty as charged. In Cr. Nos. 227-53, 228-53, 229-53, appellant was indicted for robbery[1] and on February 20, he entered pleas of not guilty. On May 19, 1953, appellant withdrew his not guilty pleas and entered pleas of guilty. He was sentenced to three (3) to nine (9) years in Cr. No. 226-53 and two (2) to six (6) years in each of the other cases, all sentences to run consecutively.

On December 13, 1954, appellant filed pro se motions to withdraw his pleas of guilty and to vacate the sentences in Cr. Nos. 227-53 and 228-53, alleging that his pleas of guilty were not voluntarily and intelligently made.[2] These motions were denied by Judge Youngdahl without a hearing on December 16, 1954. Appellant then filed a motion on January 25, 1955, to vacate Judge Youngdahl's order of December 16, 1954, and to vacate the entire judgment, apparently attacking the convictions and sentences in all four cases. On February 3, 1955, Judge Youngdahl denied appellant's motion of January 25 stating "that there was no substantial question of law" presented by the motion. On April 19, 1955, Judge Youngdahl denied appellant leave to appeal without prepayment of costs from his orders of December 16, 1954 and February 3, 1955 on the ground that there was no substantial question of law involved.

1/ Each indictment charged appellant with a different robbery.

2/ Appellant has filed many pleadings attacking his convictions and sentences in the above four cases. Treating his pleadings together he has alleged at one time or another that his guilty pleas in Cr. Nos. 227-53, 228-53, and 229-53 were not voluntarily and intelligently made first, so he contended, because he was beaten by the police and, second because the prosecutor and his defense counsel made a "deal" to have him plead guilty in return for a promise of a light sentence.

It next appears that on July 15, 1957, appellant filed a motion to set aside the convictions and sentences in Cr. Nos. 226-53, 227-53, 228-53, 229-53, alleging that he received ineffective assistance of counsel, asserting in general that a conflict of interest was present. He also asked for a hearing with him being present to determine whether he was coerced or misled in entering his guilty pleas. He applied for counsel on that day.

On September 20, 1957, the Government replied to appellant's pleadings.[3/] On October 31, 1957, counsel was appointed to defend appellant.

Appellant thereafter received a letter, dated November 7, 1957, informing him that since a transcript of his trial had been ordered, his appearance at the hearing on his pleadings would not be necessary. By letter filed November 20, 1957, appellant protested a hearing without his presence stating that he raised issues involving matter outside the files and transcript and that the denial of his presence, testimony, and his witnesses would be a denial of a fair hearing. On March 12, 1958, appellant's motions to set aside the convictions and sentences in the four cases were heard, and after argument by counsel were taken under advisement. On March 21, 1958, Judge Youngdahl denied appellant's motion for relief in Cr. No. 226-53 finding that appellant was given effective assistance of counsel. Judge Youngdahl did not rule on appellant's motions for relief in Cr. Nos. 227-53, 228-53, 229-53.

3/ The Government together with its reply submitted an affidavit of appellant's counsel in which counsel averred that he represented appellant to the best of his ability and appellant received a fair and impartial trial; that no promises of leniency on behalf of the Court, the prosecutor, or otherwise was forthcoming; that counsel was not advised of any alleged beatings or any hypnosis practiced upon appellant or that he allegedly sustained; and that counsel never discussed the possibility of probation in view of appellant's previous record.

On August 11, 1958, Judge Youngdahl denied appellant's leave to appeal in forma pauperis, stating "no substantial question of law is presented". This Court, however, allowed appellant to prosecute his appeal and on October 15, 1959, affirmed Judge Youngdahl's order in Cr. No. 226-53.[4/] But in Cases Nos. 227-53, 228-53, 229-53, this Court held that appellant was entitled to a hearing on his allegations and remanded the case to the District Court for the purpose of holding such a hearing.

Following a hearing pursuant to the mandate of this Court, Judge Youngdahl on December 16, 1959, entered an order denying appellant relief. He also filed a memorandum, copy of which we attach to this brief. See Appendix.

4/ Thomas v. United States, 106 U.S. App. D.C. 234, 271 F.2d 500 (1959).

ARGUMENT

The District Court did not abuse its discretion in denying appellant's motion, filed pursuant to 28 U.S.C. § 2255, without a hearing on the ground that it had entertained a prior motion for similar relief, held a hearing and rejected appellant's prior claim.

In his most recent motion filed pursuant to 28 U.S.C. § 2255, appellant alleged that his guilty pleas in Cr. Nos. 227-53, 228-53, and 229-53 were not voluntarily made in that they were based on misinformation as to the sentences appellant would receive. Specifically, he contended that he was misinformed by his counsel and the Assistant United States Attorney as to the length of sentences he would receive if he entered pleas of guilty. He also contended that the trial court failed to inform him of the possible penalties that could be imposed based on his guilty pleas.

On December 15, 1959, a hearing was held before Judge Youngdahl on appellant's motion to set aside his sentences in 227-53, 228-53 and 229-53. At that hearing, appellant asserted that his pleas were not voluntarily made in that, among other things, "he was 'propositioned' by the United States Attorney, his defense counsel, and Judge Curran to plead guilty in return for a 'token' sentence." Memorandum of Judge Youngdahl, dated December 16, 1959 in Cr. Nos. 227-53, 228-53, 229-53 at 1-2. Appellant's most recent claim that he was misinformed by defense counsel and the Assistant United States Attorney as to the length of the sentences he would receive if he pleaded guilty is simply a variation on the same theme that was disposed of by

Judge Youngdahl in 1959. Accordingly, Judge Youngdahl was fully justified in denying appellant relief without a hearing by referring to the hearing held in December 1959, his order and memorandum dated December 16, 1959. See Appendix.

Appellant's alternative claim that he was not advised by the trial court of the possible penalties that could be imposed based on his guilty pleas does not appear to have been specifically raised by appellant prior to the December 1959 hearing.[5/] His pre-1959 attack on his guilty pleas was two pronged: first, he alleged that he was misled by defense counsel and the Assistant United States Attorney into entering his pleas of guilty by the promise of a light sentence, and, second, that he was forced by physical brutality into entering his pleas. Memorandum of Judge Youngdahl, dated December 16, 1959 in Cr. Nos. 227-53, 228-53, 229-53. Nonetheless, we think Judge Youngdahl was justified in referring to his order and memorandum dated December 16, 1959 in denying appellant relief on this claim without a hearing. First, we think Judge Youngdahl's rejection of appellant's claim that he was misled into entering his pleas on a promise of a light sentence implicitly carried with it a finding that appellant was aware of the possible penalties that could be imposed on his

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5/ We assume for purposes of argument that, even though at the time appellant entered his pleas Rule 11 of the Federal Rules of Criminal Procedure did not explicitly require that trial court to inform the defendant of the consequences of his plea, such a requirement was then engrafted on the Rule. We note that there are decisions which hold the contrary. See United States v. McClellan, 194 F.Supp. 128 (1960), aff'd 289 F.2d 319 (3rd Cir. 1961); Marvel v. United States, 335 F.2d 101 (5th Cir. 1964), Smith v. United States, 116 U.S. App. D.C. 404, 324 F.2d 436 (1963). Compare: Burch v. United States, 359 F.2d 69 (8th Cir. 1966); Pilkington v. United States, 315 F.2d 204 (4th Cir. 1963); Munich v. United States, 337 F.2d 356 (9th Cir. 1964).

guilty pleas. Second, even assuming that Judge Youngdahl's rejection of appellant's earlier claim does not implicitly carry with it the finding that appellant was aware of the possible penalties that could be imposed, we believe that at this juncture -- some fifteen (15) years after the pleas were entered and nearly nine (9) years after appellant's § 2255 hearing based on a motion for similar relief -- Judge Youngdahl could in his discretion deny appellant relief without a hearing. Since sentence was imposed in 1959, appellant has continuously attacked his pleas arguing that they were not voluntarily made. In 1959, he was granted a hearing on his pleadings. He does not contend that that hearing was not full or fair. Rather, he simply asks for another hearing to explore further a specific allegation, going to his general claim, which could have been but apparently was not raised pre-1959. There are considerations which, we believe, at this late date vest the District Court with discretion to deny relief without a hearing on a § 2255 motion predicated on a general claim already heard and denied, although the specific allegation on which the general claim is now based may not on prior occasion have been before the court. Indeed, the very considerations which the Court found controlling in Thorton v. United States, 125 U.S. App. D.C. 114, 368 F.2d 822 (1966), in holding that an unlawful search and seizure claim is not cognizable in a § 2255 proceeding, are present here. Appellant has had an opportunity to raise and explore his specific allegation at an evidentiary hearing. He gives no reason why at this late date he makes

an allegation which he could have made fifteen (15) years ago, and which could have been heard nine (9) years ago. With fifteen years having elapsed since appellant entered his pleas, it is safe to assume that witnesses have disappeared or are no longer living; indeed, transcripts may be unavailable. Under these circumstances, we submit that Judge Youngdahl could in his discretion deny appellant relief without a hearing on the ground that he had entertained a prior motion for similar relief. See Turner v. United States, 103 U.S. App. D.C. 313, 258 F.2d 165 (1958); Moore v. United States, 108 U.S. App. D.C. 14, 278 F.2d 459 (1960); Kesel v. Reid, 109 U.S. App. D.C. 1, 283 F.2d 365 (1960); cf. Wilhite v. United States, 108 U.S. App. D.C. 279, 281 F.2d 642 (1960).

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

/s/ DAVID G. BRESS
DAVID G. BRESS
United States Attorney

/s/ FRANK Q. NEBEKER
FRANK Q. NEBEKER
Assistant United States Attorney

/s/ JOEL M. FINKELSTEIN
JOEL M. FINKELSTEIN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief has been mailed to appellant pro se, PBM No. 73777, U.S. Penitentiary, Atlanta, Georgia 30315, this 20th day of August, 1968.

/s/ JOEL M. FINKELSTEIN
JOEL M. FINKELSTEIN
Assistant United States Attorney

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Nos. 227-53
	:	228-53
RAYMOND THOMAS	:	229-53

MEMORANDUM

This case came before the Court on defendant's application for relief in the nature of a common law writ of error coram nobis. Thomas v. United States, ___ F.2d ___, (D.C. October 15, 1959) sets forth the history of the piror proceedings in these cases.

The Court has held a hearing pursuant to its order of October 20, 1959 and has taken testimony. Thomas complains that his pleas of guilty, entered on May 19, 1953, were the result of police brutality which took place on or about January 23 and May 13, 1953. Thomas testified that on or about the 23d of January, officers Ross and Herlihy struck him in the mouth and about the body at police headquarters. He further stated that Lieutenant Ross threatened that unless he plead guilty, he, Ross, "would see to it that you get a tough time". On or about May 13th, Thomas stated, he was taken from his cell in the D.C. Jail, and while being held by one officer, was struck by another--neither of whom he can identify; a tooth was knocked out, his eye seriously hurt, and internal injuries sustained. In addition, Thomas testified that cigar smoke was blown in his face and his head was held down to the floor by an officer's foot. He adds that his life was threatened and that he was "propositioned by the United States Attorney, his defense attorney, and Judge Curran to plead guilty in return for a "token"

sentence. Thus concludes Thomas, his pleas of guilty, entered on May 19, 1953 before Judge Curran, were not voluntarily made and should be withdrawn.

Not one shred of credible evidence was offered to sustain these allegations. Both Officer Ross and Officer Herlihy testified they did not beat Thomas and know of no one who did. The Court accepts their testimony as the fact. Officials of the D.C. Jail clearly demonstrated the improbability of Thomas' being beaten in the jail by proving that whenever a prisoner receives an official visit, a record of the visit is made. Furthermore, a prisoner's consent is a prerequisite to the visit. No record of any permission by Thomas was found, nor of any official visits to Thomas during May, 1953. Moreover, from the testimony, the Court finds there was no place at the jail in which this beating could have occurred.

The testimony of Schowers, Thomas' co-defendant (also convicted) that on January 23rd he heard Thomas being beaten, saw Thomas being dragged along the floor by an officer and later saw bruises on Thomas' head and saw Thomas spitting blood in the latrine, is not worthy of belief. The evidence produced in the affidavit of one Morgan, a convicted felon, presently incarcerated in Alcatraz (which is also Thomas' place of detention) is only that he saw "Raymond Thomas, the above named defendent, in a beaten up condition in the second week of May, 1953; that said Thomas had a tooth knocked out and a scar (sic] over his left eye." He did not state that he saw Thomas being beaten by the police. In the present state of the record, the Court finds this affidavit to be insufficient to justify a finding that (a) Thomas was beaten by the police, or that (b) Thomas plead guilty involuntarily.

The attorney who represented Thomas at his trial in Criminal Case No. 226-53 and at the time Thomas plead guilty in 227-53 through 229-53, inclusive, testified that he does not recall any conversations about or observation of any beatings inflicted upon Thomas.

The files show that Thomas filed a motion in December, 1954, and another in January, 1955 under §2255 and in neither was there any mention of police brutality.

The Court finds the defendant's pleas to have been made voluntarily; further, in all other respects, the motion, files and records conclusively show Thomas is not entitled to any relief.

/s/ LUTHER W. YOUNGDAHL
JUDGE

December 16, 1959